

**REMARKS/ARGUMENTS**

This is in response to the official action dated May 29, 2008.

**Claim rejections under 35 USC § 102**

The Examiner rejected Claims 9-11 as being anticipated by Mühmel et al. (US 6,135,431). It is axiomatic that anticipation requires identity of invention. *See* MPEP 2131. *See also Glaverbel Societe Anonyme v. Northlake Mktg. & Supply*, 33 USPQ2d 1496, 1498 (Fed. Cir. 1995). Each and every element recited in a claim must be found in a single prior art reference and arranged as in the claims. *In re Marshall*, 198 USPQ 344, 346 (CCPA 1978); *Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). There must be no differences between what is claimed and what is disclosed in the prior art reference. *In re Kalm*, 154 USPQ 10, 12 (CCPA 1967.) Moreover, it is incumbent upon the Examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference. *Ex parte Levy*, 17 USPQ2d 1461, 1462 (BPAI 1990).

Mühmel provides a fundamentally different invention, having only the common purpose with applicant's invention, which is to provide a container (cartridge) for holding fragrance. In the present invention, the cartridge includes cartridge channels, which are of capillary dimensions such that the fragrance is substantially trapped and can only escape when a carrier gas is applied. In other words, the capillary tubes are completely open to the atmosphere without any fragrance escaping from the capillaries.

In contrast to applicant's claimed invention, Mühmel has no capillary tubes whatsoever. Mühmel provides aluminum tubes sealed with membrane disks (6), which are being punctured before gas can be passed through to carry the fragrance. In Col. 3, lines 18, the specification of Mühmel speaks of glass or preferably, of an aluminum tube having a diameter of 10-20 mm, which is not a capillary or not even a tube with capillary action. The Examiner states that "The cannulae will inherently define capillary passages", see office action page 2, last line and page 3, first line. It is not clear to applicant what the Examiner means. However, what the Examiner apparently misunderstands and incorrectly applies to Applicant's invention is the disclosure in Col. 2, lines 38, where Mühmel states that the membrane disks (6) are being punctured with a needle or cannulae so that a discharge of scent is possible. Piercing an opening into a closing

membrane and utilizing a first and second capillary ingress and capillary egress channels which are being defined by capillaries having internal diameter and length dimensions sufficient to act as closure means to substantially prevent leakage of fragrance from the reservoir of the cartridge when there is no demand of carrier gas, is an entirely different physical principle and the two have nothing in common.

Moreover, there is no indication that the cannulae of Mühmel are of capillary dimensions. Indeed, there is no point that they be so. Applicant's invention contains the fragrance within the reservoir by means of the capillary tubes, Mühmel uses membrane disks to contain the fragrance. The membrane disks have to be punctured. In other words, another element has to be introduced. The fact that a needle is an acceptable alternative to a cannula is a clear indication that capillaries were not in mind when the invention of Mühmel was made. There is no teaching whatsoever of capillaries and not even the slightest hint that a capillary can be used. Moreover, even if a cannula of capillary dimensions were used, this would be totally irrelevant - the point is that the cannulae are not part of the cartridge, but are additional components, whereas the cartridges of the present invention need no such additional components to release the fragrance.

Thus, Mühmel does not anticipate the invention and the rejection should be withdrawn.

Applicant also points out that the present amendment does not provide new matter to the claim, it simply is a formalistic amendment which stresses what was already in the claim, namely that the "first and second capillary ingress and capillary egress channels being defined by capillaries having internal diameter and length dimensions sufficient to act as closure means to substantially prevent leakage of fragrance from the reservoir of the cartridge when there is no demand of carrier gas."

Accordingly, for the reasons discussed above, Applicant submits that the rejection should be withdrawn and the claims should pass to issue.

### **Claim rejections under 35 USC § 103**

The Examiner rejected claims 2-4, and 8-11 as being unpatenable over Mühmel et al. in view of Nightingale (GB 2,042,340). The Examiner rejected claim 5 as being unpatenable over Mühmel et al. in view of Chiao et al. (US 2002/0114744), or alternatively, over Mühmel et. and Nightingale, further in view of Chiao et al. The Examiner rejected claims 6 and 7 as being

unpatenable over Mühmel et al., Nightingale, and Chiao et al. as applied to claim 5 above, and further in view of Karp (US 7,261,812). Applicant submits that all claims are directly or indirectly dependent from claim 10 or contain the same limitations as claim 10 does, and these limitations are fundamentally different from Mühmel. The secondary references cannot overcome such fundamental differences as they were discussed above, and thus, the obviousness rejection should be withdrawn. Even if a Nightingale reference provides filters, such disclosure cannot overcome the fact that Mühmel is based on piercing closure means to bring the fragrance to the outside.

Similar, concerning the Chiao and Karp reference, the combination with such references also does contribute in overcoming the principle differences between applicant's invention and the primary reference and thus, the combination does not render obvious the dependent claim, as enumerated.

Accordingly, applicant's presently claimed invention is not obvious over the references cited and the rejection should be withdrawn and the claims should pass to issue.

#### **CONDITIONAL PETITION FOR EXTENSION OF TIME**

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Assistant Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,  
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